

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



# TRANSCRIPT OF RECORD.

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## Court of Appeals, District of Columbia

OCTOBER TERM, 1909.

No. 2012

591

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EDWARD H. BRAXTON, APPELLANT,

vs.

EMMA TOLIVER JOHNSTON.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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FILED APRIL 23, 1909.

*Jan. 5<sup>th</sup>*  
*P.*

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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# In the Court of Appeals of the District of Columbia.

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No. 2012.

EDWARD H. BRAXTON, Appellant,  
vs.  
EMMA TOLIVER JOHNSTON.

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a Supreme Court of the District of Columbia.

Equity. No. 28154.

EDWARD H. BRAXTON, Complainant,  
vs.  
EMMA TOLIVER JOHNSTON, Defendant.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill.*

Filed November 13, 1908.

In the Supreme Court of the District of Columbia, Holding an  
Equity Court.

Equity. # 28154, Doc. # —.

EDWARD H. BRAXTON, Complainant,  
vs.  
EMMA TOLIVER JOHNSTON, Defendant.

To the Honorable the Justice of the Supreme Court of the District of Columbia, holding an Equity Court, your complainant states to the court as follows:

(1) That he is a citizen of the United States, and a resident of the District of Columbia, and brings this suit in his own right.

(2) That the defendant, Emma Toliver Johnston, is also a citizen of the United States, and a resident of the City or Town of Ben Avon,

in the State of Pennsylvania, but now residing temporarily in the District of Columbia, and is sued in her own right.

(3) That the complainant is the husband of one Fannie E. Braxton, deceased, who departed this life in the City of Washington, District of Columbia, on or about the sixteenth day of April A. D. 1907, and that said Fannie E. Braxton, died intestate.

(4) That said decedent, Fannie E. Braxton, left surviving her as her only heirs-at-law, and next of kin, one sister, Emma Toliver Johnston, the defendant in this cause, who is over the age of twenty one years, and a resident as aforesaid, and your complainant, who brings this suit in his own right as will be hereinafter fully set forth.

(5) That the aforesaid Fannie E. Braxton, died seized and possessed of the following real estate, situate lying and being in the County of Washington, District of Columbia, and known as and being Lot Numbered eighteen (18) in Square Numbered one thousand eight hundred and forty four (1844), formerly known as Block Lettered "B" in Onion and Butts' Subdivision of the estate of Giles Dyer, deceased, known as Reno, District of Columbia.

(6) That the aforesaid real estate was conveyed to the aforesaid Fannie E. Braxton, (whose maiden name was Fannie E. Toliver), by Thomas Walker and Emanuel M. Hewlett, Attorneys at Law, by their certain Deed bearing date on the 31st day of July A. D. 1902 as the same appears of record in Liber # — Folio # — one of the land records in the office of the Recorder of Deeds for the District of Columbia. That at the time of the purchase and conveyance of the aforesaid real estate, to the aforesaid Fannie E. Braxton, the same was unimproved, and remained so unimproved until the time hereinafter set forth.

(7) That at the time of the marriage of the complainant, to the aforesaid Fannie E. Braxton, deceased, which marriage occurred on or about the fifth day of October A. D. 1903, the aforesaid real estate was still unimproved, and remained so unimproved until on or about the seventh day of July A. D. 1904.

(8) That being anxious to improve the aforesaid real estate, as well as anxious to provide a home for himself, as well as a home for his wife, the aforesaid Fannie E. Braxton, during her life time, your complainant began in the month of July A. D. 1904, to improve the aforesaid real estate by erecting thereon at his own cost and expense, a dwelling house as a home for his wife, the aforesaid Fannie E. Braxton, and for your complainant, in order that the aforesaid Fannie E. Braxton, might be properly housed during her life time, and in order further, that your complainant, in the event of his surviving his wife, the aforesaid Fannie E. Braxton, might have a place of dwelling as his own, and that, in the event of the death of your complainant, the same might descend to his heirs-at-law.

(9) Your complainant further avers, that the dwelling erected as aforesaid, was erected by your complainant at a cost and expense to him of about Twenty Five Hundred (\$2500) Dollars, which sum included the cost of building material, labor hire, plans and specifications, permit, and other cost and expense necessary and essential to the erection and completion of said dwelling.

(10) That the entire cost and expense for the erection and completion of said dwelling was paid for by complainant with his own money, most of which your complainant had accumulated prior to his marriage to the aforesaid Fannie E. Braxton, deceased,  
4 and a part subsequent to his said marriage.

(11) Your complainant further avers, that he intended said dwelling as his sole, separate and absolute property, that he has never by word, act, deed, gift, will nor by any other instrument or instruments, or in any manner known to law, nor in any way or manner whatsoever, conveyed, deeded, transferred, or assigned said dwelling house to the aforesaid Fannie E. Braxton, nor to any other person or persons, nor has he ever expressed an intention so to do, but has always ~~claimed~~ <sup>and</sup> defended and does still claim and defend his title and right to the aforesaid dwelling."

(12) That being the lawful and rightful owner of the aforesaid dwelling your complainant is advised, believes and therefore avers that he is entitled to a decree of this court vesting the title to said dwelling in your complainant.

(13) That on or about the twenty ninth day of November A. D. 1907, the defendant herein, filed on the Law side of the Supreme Court of the District of Columbia, an action of ejectment against your complainant, with a count for mesne profits. That your complainant has joined issue with the plaintiff in said cause, and that said ejectment cause is now on the trial calendar in Circuit Court #2, all of which will more fully appear by reference to the proceedings had in said cause, the same being Law #49994.

5 (14) Your complainant is further advised, believes and therefore avers, that a court of Equity is the proper and only tribunal for the enforcement of his rights in the premises, and vesting in him the title to the aforesaid dwelling. That a court of law is without jurisdiction to grant your complainant the relief he here seeks, and that the prosecution of said ejectment cause would work to the absolute detriment and harm of your complainant.

Complainant is advised, believes and therefore avers that some question may be raised as to his right to make all necessary and proper defenses in said law cause, brings and files this suit to the end that the prosecution of the same may be enjoined, and prays to the court as follows.

*Prayers.*

(1) That the defendant be enjoined and restrained during the pendency of this suit from prosecuting in any manner said ejectment cause at Law #49994, or any other proceedings for the recovery of said property from this complainant and that upon final hearing of this cause said injunction may be made perpetual.

(2) That your complainant may have a decree passed and signed by this Honorable Court establishing the right of the complainant to the aforesaid dwelling and vesting in him the title thereto.

(3) That a rule may issue out of this court requiring the defendant herein to show cause on a day certain therein named, why the

prayer of the complainant for a restraining order should not be granted.

6 (4) That process may issue out of this court directed to the defendant commanding her to appear within the time required by the rule of this court and answer the exigencies of this bill of complaint.

(5) That your complainant may have such other and further relief as the nature of the case may require and as to the court may seem just and proper.

EDWARD H. BRAXTON,  
*Complainant.*

HUGHES AND GRAY,  
*Attorneys for Complainant.*

I do solemnly swear that I have read the foregoing Bill of Complaint by me subscribed and know the contents thereof, that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

EDWARD H. BRAXTON.

Subscribed and sworn to before me this 10th day of November, A. D. 1908.

[SEAL.]

WM. L. POLLARD,  
*Notary Public, D. C.*

7

*Rule to Show Cause.*

Filed November 13, 1908.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. # 28154, Doc. # —.

EDWARD H. BRAXTON, Complainant,  
vs.  
EMMA TOLIVER JOHNSTON, Defendant.

On consideration of the prayer of the complainant in his bill of complaint for a rule to show cause, it is thereupon, this 13th day of November, A. D. 1908, ordered, that the defendant, Emma Toliver Johnston, show cause on Friday, November 20th, A. D. 1908, why the prayer of the complainant for a restraining order against the aforesaid defendant, should not be granted, provided a copy of this rule be served on the defendant, the aforesaid Emma Toliver Johnston, on or before, Tuesday the seventeenth day of November, A. D. 1908.

JOB BARNARD, *Justice.*



8

*Answer.*

Filed November 20, 1908.

In the Supreme Court of the District of Columbia, Holding an  
Equity Court.

Equity. No. 28154.

EDWARD H. BRAXTON, Complainant,  
vs.  
EMMA TOLIVER JOHNSTON, Defendant.

The defendant, Emma Toliver Johnston, answering at this time the rule to show cause issued herein on the 13th day of November, 1908, says:

She denies that the complainant is an heir-at-law or next-of-kin of the late Fannie E. Braxton, as averred in the 4th paragraph of the bill of complaint filed herein, and avers the fact to be that said complainant was the husband of said Fannie E. Braxton, but that this defendant is her sole heir-at-law and next-of-kin; this defendant further denies that the complainant paid with his own money the entire cost and expense of erecting the certain dwelling-house on the land in said bill described, as averred in paragraphs 8-10 of said bill and more particularly in paragraph 10 thereof, and upon information and belief avers that a very large part of the cost and expense of said dwelling-house was paid by said Fannie E. Braxton out of her own earnings; this defendant is advised that paragraph 9 11 of said bill is immaterial and irrelevant to this cause.

This defendant denies that said complainant has, or by said bill has shown, any right or equity in him of any kind whatsoever in the land or improvements aforesaid, or any ground upon which this Honorable Court should or may restrain or enjoin said proceedings at law or grant any other relief to complainant.

EMMA TOLLIVER JOHNSTON.

STANTON C. PEELE,  
*Solicitor for Defendant.*

DISTRICT OF COLUMBIA, ss:

I, Emma Toliver Johnston, on oath say that I have read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated upon my personal knowledge are true and those stated upon information and belief I believe to be true.

EMMA TOLLIVER JOHNSTON.

Subscribed and sworn to before me this 18 day of November, 1908.

[SEAL.]

GEORGE W. SMITH,  
*Notary Public, D. C.*

10

*Demurrer.*

Filed November 21, 1908.

In the Supreme Court of the District of Columbia, Holding an  
Equity Court.

Equity. No. 28154.

EDWARD H. BRAXTON, Complainant,  
vs.  
EMMA TOLIVER JOHNSTON, Defendant.

Now comes the defendant, Emma Toliver Johnston, and by protestation, not confessing or acknowledging all or any of the matters and things in the bill of complaint herein to be true in such manner and form as the same are herein set forth and alleged, doth demur to said bill of complaint upon and for the following reasons among others:

1. That by said bill of complaint it appears that the defendant is legally entitled to the land in said bill of complaint described, as the sole heir-at-law of the person who died legally seized and possessed of the same; and that said complainant has no right or equity in said land or the improvements thereon by reason of any thing or matter averred in said bill of complaint.

2. That said bill contains no matter or equity whereon this Court can ground any decree or give complainant any relief against this defendant.

11 Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, this defendant prays judgment of this Honorable Court whether she shall be compelled to make any other answer to said bill.

EMMA TOLLIVER JOHNSTON.

STANTON C. PEELLE,  
*Solicitor for Defendant.*

I hereby certify, as counsel for the defendant in the foregoing demurrer, that in my opinion the same is well founded in point of law and proper to be filed.

STANTON C. PEELLE,  
*Solicitor for Defendant.*

DISTRICT OF COLUMBIA, ss:

The defendant, Emma Toliver Johnston, being first duly sworn, on oath says that the foregoing demurrer is not interposed for delay.

EMMA TOLLIVER JOHNSTON.

Subscribed and sworn to before me this 18 day of November, 1908.

[SEAL.]

GEORGE W. SMITH,  
*Notary Public, D. C.*

12

*Decree Dismissing Bill.*

Filed December 2, 1908.

In the Supreme Court of the District of Columbia, Holding an  
Equity Court.

Equity. No. 28154.

EDWARD H. BRAXTON, Complainant,

VS.

EMMA TOLIVER JOHNSTON, Defendant.

Upon application of the defendant, and it appearing to the Court that said defendant filed her demurrer to the bill of complaint herein on the 21st day of November, 1908, and duly served the complainant with a copy thereof on the 23rd day of November, 1908, but that said complainant has failed to set down said demurrer for argument, It is, by the Court, this 2d day of December, 1908, Adjudged, ordered and decreed that said complainant be, and he is hereby, held to have admitted the sufficiency of said demurrer, under the provisions of rule numbered 33 of this Court, and it is further adjudged, ordered and decreed that said demurrer be, and the same is hereby, sustained, and the said bill of complaint, together with all proceedings heretofore had thereon, is hereby dismissed, all at the cost of the complainant.

JOB BARNARD, *Justice.*

13

*Final Decree.*

Filed December 29, 1908.

In the Supreme Court of the District of Columbia, Holding an  
Equity Court.

Equity. No. 28154.

EDWARD H. BRAXTON, Complainant,

VS.

EMMA TOLIVER JOHNSTON, Defendant.

Upon application of the complainant, It is, by the Court, this 29th day of December, 1908, Ordered that the decree heretofore entered in the above entitled cause on December 2, 1908, be, and the same is hereby, vacated, set aside, and held for naught, and said cause thereupon coming on for a final hearing upon the bill of complaint filed herein and the demurrer of the defendant thereto, It is, by the Court, this 29th day of December, 1908, Adjudged, ordered, and decreed that said demurrer be, and the same is hereby sustained, and the said bill of complaint, together with all proceed-

ings, heretofore had thereon, is hereby dismissed, all at the cost of the complainant.

JOB BARNARD, *Justice*.

From this decree the complainant appeals in open Court and the penalty of his bond is fixed at \$100.00.

JOB BARNARD, *Justice*.

14

*Memorandum.*

January 6, 1909.—Appeal bond filed.

*Order Extending Time to File Transcript of Record.*

Filed February 16, 1909.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. # 28154, Doc. # 62.

EDWARD H. BRAXTON, Complainant,

vs.

EMMA TOLIVER JOHNSTON, Defendant.

On motion of the complainant filed in the above entitled cause, it is thereupon, this 16th day of February, A. D. 1909, ordered that the complainant be, and he is hereby allowed thirty days, from date hereof in which to file Transcript of Record in this cause.

By the Court:

JOB BARNARD, *Justice*.

15 *Directions to Clerk for Preparation of Transcript of Record.*

Filed February 24, 1909.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. # 28154, Docket # 62.

EDWARD H. BRAXTON, Complainant,

vs.

EMMA TOLIVER JOHNSTON, Defendant.

The Clerk will please prepare Transcript of Record in the above entitled cause, and include in the same the following papers:

Bill, filed November 13, 1908.

Rule to Show Cause, filed November 13, 1908.

Answer of the defendant, filed November 20, 1908.

Demurrer, filed November 21, 1908.

Order dismissing bill, filed December 2, 1908.

Decree vacating order of December 2, 1908, sustaining the demurrer and dismissing the bill, Appeal noted, filed December 29, 1908.

Appeal Bond (\$100.00) Approved January 6, 1909.

Order extending time to filed Transcript of Record, filed January 16, 1909.

HUGHES AND GRAY,  
*Attorneys for Complainant.*

16

*Memorandum.*

March 23, 1909.—Time in which to file transcript of recorded in Court of Appeals of the District of Columbia, extended thirty (30) days from date.

17

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 16, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 28154 In Equity, wherein Edward H. Braxton is Complainant and Emma Toliver Johnston is Defendant, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 29th day of March, A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2012. Edward H. Braxton, appellant, vs. Emma Toliver Johnston. Court of Appeals, District of Columbia. Filed Apr. 23, 1909. Henry W. Hodges, clerk.